

ORDINANCE NO. 2009 - 08

**AN ORDINANCE OF THE CITY OF NEVADA CITY ADDING
CHAPTER 9.22 TO THE NEVADA CITY MUNICIPAL CODE PROHIBITING MEDICAL
MARIJUANA DISPENSARIES**

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq. and entitled the "Compassionate Use Act of 1996"); and

WHEREAS, in 2004, Senate Bill 420 (the "Medical Marijuana Program Act") addressing the scope and implementation of the Compassionate Use Act went into effect; and

WHEREAS, use of medical marijuana in Nevada City is governed by State statutes and guidelines, including the Compassionate Use Act and the Medical Marijuana Program Act, as those statutes have been interpreted by the Courts, and the Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use published by the Office of the Attorney General, California Department of Justice, and by County guidelines and protocols, including the Guidelines for Nevada County Physician Approved Medical Marijuana Patients and the Nevada County Medical Marijuana Inter-Agency Protocol published by the Office of the Nevada County District Attorney; and

WHEREAS, none of these statutes, guidelines or protocols require medical marijuana dispensaries to be allowed within all jurisdictions nor do they limit or restrict the authority of cities to regulate operation of businesses within their city limits under the police power granted by the Constitution and Section 11362.83 of the Medical Marijuana Program Act provides that: "Nothing in this article shall prevent a city or other governing body from adopting and enforcing laws consistent with this article"; and

WHEREAS, regulating operation and location of medical marijuana dispensaries to protect the public health, safety, and welfare of city residents is not inconsistent with nor is it intended to impair the rights of qualified patients and primary caregivers, as those terms are defined below, found in the Compassionate Use Act or the Medical Marijuana Program Act; and

WHEREAS, there is no satisfactory location available within the municipal boundaries of Nevada City for the operation of a medical marijuana dispensary:

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nevada City as follows:

There is hereby added to the Nevada County Municipal Code, Chapter 9.22 which is to read as follows:

Section 9.22.01 Definitions

For the purpose of this chapter, certain terms and words are defined as set out in this chapter:

"Medical Marijuana" or "Medical Cannabis" shall include the leaf of the cannabis plant and all products derived from the cannabis plant including, but not limited to, oils, tinctures, butters, candies, lotions, powders, creams, salves and balms, baked goods and any other food products.

"Medical Marijuana Dispensary" means any facility or location where medical marijuana or cannabis is made available, distributed, sold, transmitted, given and/or otherwise provided to other persons on an ongoing basis, excluding dispensing by primary caregivers to qualified patients in a clinic, health care facility, residential hospice, or residential care facility otherwise permitted by the Municipal Code or by applicable State so long as any such facility complies strictly with all applicable laws, including, without limitation, California Health and Safety Code Sections 11362.5 et seq.

"Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or any combination thereof, in whatever form or character.

"Primary Caregiver" shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., and as may be amended.

"Qualified Patient" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

Section 9.22.02 Medical Marijuana Dispensaries Prohibited

Except as hereinafter otherwise provided in the Nevada City Municipal Code, it shall be unlawful for any person or collective or cooperative organization to engage in, conduct, or carry on, or to permit to be engaged in, conducted or carried on, the operation of a Medical Marijuana Dispensary in or upon any premises in the City of Nevada City.

PASSED AND ADOPTED this ___ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Reinette Senum, Mayor

ATTEST:

Niel Locke, City Clerk